

SENATE BILL 1662

By Finney L

AN ACT to amend Tennessee Code Annotated, Title 36,
relative to alienation of affections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 3, Part 7, is amended by
adding the following new section thereto:

§ 36-3-702.

The common law tort of parental alienation is abolished and there shall be
no cause of action for such tort. For purposes of this section, “parental
alienation” means the conduct by which a biological or adoptive parent attempts
to diminish the affections a child has for or the emotional bonds the child has to
another biological or adoptive parent by criticizing the other biological or adoptive
parent or depreciating the value of the other biological or adoptive parent to the
child.

SECTION 2. Tennessee Code Annotated, Section 36-6-101(a)(4), is amended by
deleting the subdivision in its entirety and substituting instead the following:

(a)

(4)

(A) Notwithstanding any common law presumption to the
contrary, a finding under § 36-6-106(8), that child abuse, as defined in §
39-15-401 or § 39-15-402, or child sexual abuse, as defined in § 37-1-
602, has occurred within the family creates a rebuttable presumption that
it is detrimental to the child and not in the best interests of the child to

award sole custody, joint legal or joint physical custody to the perpetrator of such abuse.

(B) A claim of parental alienation asserted by the parent who has been found to be the perpetrator of child abuse or sexual abuse shall not alone be sufficient to rebut the presumption established in subdivision (b)(4)(A). For purposes of this subdivision (b)(4)(B), "parental alienation" means the conduct by which a biological or adoptive parent attempts to diminish the affections a child has for or the emotional bonds the child has to another biological or adoptive parent by criticizing the other biological or adoptive parent or depreciating the value of the other biological or adoptive parent to the child.

SECTION 3. Tennessee Code Annotated, Section 36-6-106, is amended by deleting the section in its entirety and substituting instead the following:

(a) As used in this section, unless the context otherwise requires:

(1) "Caregiver" has the meaning ascribed to that term in § 37-5-501;

(2) "Parental alienation" means the conduct by which a biological or adoptive parent attempts to diminish the affections a child has for or the emotional bonds the child has to another biological or adoptive parent by criticizing the other biological or adoptive parent or depreciating the value of the other biological or adoptive parent to the child; and

(3) "Parental alienation syndrome" means a child suffers from a disturbance caused by a biological or adoptive parent engaging in parental alienation.

(b) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child,

the determination shall be made on the basis of the best interest of the child. The court shall consider all relevant factors, including the following, where applicable:

(1) The love, affection and emotional ties existing between the parents or caregivers and the child;

(2) The disposition of the parents or caregivers to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent or caregiver has been the primary caregiver;

(3) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment; provided, that, where there is a finding, under subdivision (a)(8), of child abuse, as defined in § 39-15-401 or § 39-15-402, or child sexual abuse, as defined in § 37-1-602, by one (1) parent, and that a nonperpetrating parent or caregiver has relocated in order to flee the perpetrating parent, that the relocation shall not weigh against an award of custody;

(4) The stability of the family unit of the parents or caregivers;

(5) The mental and physical health of the parents or caregivers;

(6) The home, school and community record of the child;

(7)

(A) The reasonable preference of the child, if twelve (12) years of age or older;

(B) The court may hear the preference of a younger child on request. The preferences of older children should normally be given greater weight than those of younger children;

(8)

(A) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; provided, that, where there are allegations that one (1) parent has committed child abuse, as defined in § 39-15-401 or § 39-15-402, or child sexual abuse, as defined in § 37-1-602, against a family member, the court shall consider all evidence relevant to the physical and emotional safety of the child, and determine, by a clear preponderance of the evidence, whether such abuse has occurred. The court shall include in its decision a written finding of all evidence, and all findings of facts connected to the evidence. In addition, the court shall, where appropriate, refer any issues of abuse to the juvenile court for further proceedings;

(B) If the court finds that abuse has occurred, the assertion of a claim of parental alienation by the parent who has been found to be the perpetrator of child abuse or sexual abuse shall not be considered by the court as a factor in mitigating or overruling such a finding;

(9) The character and behavior of any other person who resides in or frequents the home of a parent or caregiver and the person's interactions with the child; and

(10) Each parent or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child.

(c) For purposes of subsection (b), a relevant factor shall not include evidence of parental alienation syndrome.

(d) Notwithstanding any law to the contrary, the court has jurisdiction to make an initial custody determination regarding a minor child or may modify a prior order of child custody upon finding that the custodial parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian.

(e) Nothing in subsection (b) shall be construed to affect or diminish the constitutional rights of parents that may arise during and are inherent in custody proceedings.

SECTION 4. Tennessee Code Annotated, Section 36-6-406(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a)

(1) The permanent parenting plan and the mechanism for approval of the permanent parenting plan shall not utilize dispute resolution, and a parent's residential time as provided in the permanent parenting plan or temporary parenting plan shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that a parent has engaged in any of the following conduct:

(A) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting responsibilities; or

(B) Physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in § 36-3-601.

(2) This subsection (a) shall apply notwithstanding an assertion of a claim of parental alienation by the parent who has been found to be the perpetrator of child abuse or sexual abuse. For purposes of this subdivision (a)(2), "parental alienation" means the conduct by which a biological or adoptive parent attempts to diminish the affections a child has for or the emotional bonds

the child has to another biological or adoptive parent by criticizing the other biological or adoptive parent or depreciating the value of the other biological or adoptive parent to the child.

SECTION 5. This act shall take effect July 1, 2009, the public welfare requiring it.